

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CG Docket No. 10-213
Advanced Communications Provisions of)	
the Twenty-First Century Communications)	DA 10-2029
and Video Accessibility Act of 2010)	

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ responds to the October 21, 2010 Public Notice released by the Consumer & Governmental Affairs Bureau and the Wireless Telecommunications Bureau of the Federal Communications Commission (FCC or Commission) seeking comment on the advanced communications provisions in Section 104, Title I of the Twenty-First Century Communications and Video Accessibility Act of 2010 (Accessibility Act).² Title I of the Accessibility Act creates new sections 716, 717, and 718 of the Communications Act of 1934, and the FCC is required to promulgate rules implementing Section 716 within one year of enactment, *i.e.*, by October 8, 2011.³ The FCC has indicated that the Public Notice is a precursor to a forthcoming notice of proposed rulemaking.⁴

¹ NTCA is a premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 576 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers, and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended. NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Consumer & Governmental Affairs Bureau and Wireless Telecommunications Bureau Seek Comment on Advanced Communication Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, Public Notice, DA 10-2029 (rel. Oct. 21, 2010) (Public Notice); *Twenty-First Century Communications and Video Accessibility Act of 2010*, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (Accessibility Act), Title I – Communications Access, creating Sections 716, 717 and 718 of the Communications Act of 1934, as amended, and codified as 47 U.S.C. §§ 617, 618, and 619.

³ Section 716(e)(1).

The Accessibility Act fills a gap for the deaf and blind in gaining access to advanced communications services not already covered under Section 255 of the Communications Act, which requires manufacturers and providers of telecommunications services to make their equipment and services accessible to persons with disabilities, if accessibility is readily achievable.⁵ The Accessibility Act requires those who provide “advanced communications services and manufacturers of equipment and software used with those services to ensure that their equipment and software offered for sale” will be accessible to and usable by disabled persons, unless accessibility is not achievable.⁶ Section 716(g) defines “achievable” as meaning, “with reasonable effort or expense, as determined by the Commission.” In making this determination, the FCC must consider among other things: 1) the nature and costs of the steps necessary to comply; 2) the technical and economic impact of compliance on the provider; 3) the type of operations; and 4) the provider’s variety of accessibility offerings.⁷

Congress recognized that compliance with the Accessibility Act may create financial and logistical burdens on small businesses and, in Section 716(h)(2), permitted the FCC to exempt small entities from the provisions of Section 716; there is also a separate waiver provision in Section 716(h). The phrase “small entities” is not defined in the Accessibility Act.

The Accessibility Act requires providers of advanced communications services and related equipment manufacturers to provide persons with disabilities access to Internet-protocol

⁴ Public Notice at 2.

⁵ See 47 U.S.C. § 255.

⁶ Public Notice at 2.

⁷ Accessibility Act, Section 716(g).

(IP) based communications and video programming technologies.⁸ Under Section 716, for example, rural local exchange carriers (RLECs) such as NTCA's members and/or their affiliates could be required to make the smart phones and IP-based services they sell compatible for the deaf and blind. Providers and manufacturers are allowed, under Section 716, to meet these accessibility requirements by relying on third party suppliers or by ensuring that their equipment is compatible with specialized equipment commonly used by persons with disabilities. Section 716 would also require providers to meet performance objectives established by the FCC and to keep records on accessibility complaints.

NTCA encourages the FCC to exempt small entities that qualify as small business entities from the application of Section 716 pursuant to Section 716(h)(2) and consistent with the Regulatory Flexibility Act (RFA), 5 USC §§ 601 *et seq.* NTCA member companies recognize the benefits of providing rural customers in their service territories with a range of IP-based offerings and delivery products, like smart phones. However, due to the high-cost nature of providing advanced communications services in rural areas and the fact that these service providers are in most instances small businesses, many small RLECs and their affiliates may not be able to afford to provide the same high-tech accessibility-compatible equipment or services that larger and more urban counterparts can provide.

Small businesses such as RLECs do not possess the market or purchasing power to drive manufacturers and vendors to make modifications that may be necessary for compliance with the Accessibility Act, nor do these small providers have the resources or capabilities to develop their own equipment to comply with the provisions of Section 716. Congress recognized through the small entity exemption that the cost of compliance with Section 716 for small business entities

⁸ Public Notice at 1.

may not prove achievable, and that the waiver process available through Section 716(h)(1) is unsuitable for small entities because such a process would be too expensive and time-consuming.

In its upcoming rulemaking proceeding, the FCC should exempt small businesses such as RLECs and their affiliates from the scope of Section 716 by exercising the authority that has been specifically delegated by Congress under Section 716(h)(2). Furthermore, the FCC should interpret “small entities” in Section 716 to include “small businesses” as defined by the RFA. By doing so, the FCC will ensure that small RLECs and their affiliates who satisfy the RFA standard have the necessary flexibility to deploy and offer advanced communications services for the benefit of rural consumers without facing outsized or unachievable regulatory burdens.

Respectfully submitted,



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November 22, 2010

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CG Docket No. 10-213, DA 10-2029, was served on this 22nd day of November 2010 via electronic mail to the following persons:

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